IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12107 of 2006
With
SPECIAL CIVIL APPLICATION No. 9348 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KANJIBHAI MAVJIBHAI CHAVDA - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance : [SCA NO. 12107/2006]

MR SHIRISH JOSHI with MR HASIT H JOSHI for Petitioner(s) : 1,
MR KRUNAL PANDYA A.G.P. for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 – 3.

Appearance : [SCA NO. 9348/2006]

MR SHIRISH JOSHI with MR HASIT H JOSHI for Petitioner(s) : 1,
MR MANISH BHATT for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 – 3.

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 30/08/2007

ORAL COMMON JUDGMENT

1. Special Civil Application No. 12107/2006 is filed to challenge the order of respondent no. 3 dated 9th May, 2005, whereby the retail licence of the petitioner being no. 333/1995 has been cancelled. The said order was confirmed by respondent no. 2 in appeal by order dated 7th November, 2005 and it was further confirmed by respondent no. 1 by dismissing the revision application filed by the petitioner by order dated 29th April, 2006. These two orders are also challenged in this petition.

1.1. Special Civil Application No. 9348/2007 is filed against the order of respondent no. 2, namely the Indian Oil Corporation Limited, dated 7th March, 2007 discontinuing the supply of LPG to the petitioner, in view of the cancellation of retail licence of the petitioner. Since both these petitions are closely interconnected, they are heard together and now they are being disposed of by this common judgment.

2. The petitioner was granted retail licence bearing no. 333/1995 for distribution of LPG supplied by the Indian Oil Corporation Limited. The petitioner carried on the distributorship at Dhandhuka in premises bearing Municipal No. 2519/2, Darbar Boarding, Dhandhuka which were rented premises. However, subsequently, since the owner of the premises required them, the petitioner

shifted his showroom by seeking permission of the respondent authorities vide letter dated 17th April, 2003, and the change of place was duly accepted by the authorities. It appears from the record of the petition that surprise inspection was carried out at the premises of the petitioner where he was running the agency, on 29th January, 2005, and during the course of checking, 6 alleged irregularities were noticed. They are as under :-

1) There were deficits of 11 LPG Gas Cylinder of 5 kg., for which no explanations have been given by the petitioner.

2) The petitioner was doing a business at place other then the place for which licences had been given to the petitioner.

3) The petitioner had started distribution point in Dhandhuka City at Ambapur, Jining and Khada Chora without permission of the authority.

4) The petitioner was not giving discount to the customers, who took cylinder personally as per the cash and carry scheme.

5) No chronology had been maintained for booking of customers.

6) No signatures were being taken on delivery slip, and hence, there was no evidence that to whom the delivery of the cylinder had been made.

2.1. In view of the same, the petitioner was served with the notice dated 9th March, 2005, calling upon him to

show-cause as to why the retail licence issued in his favour should not be cancelled. In response to the said notice, the petitioner submitted his reply dated 22nd March, 2005 to respondent no. 3 who subsequently by order dated 9th May, 2005 cancelled the licence of the petitioner while exercising powers under Clause 8 of the Licence Control Order. It appears from the record of the petition that along with the show cause notice no material which was sought to be relied on by the authority subsequently in the proceedings against the petitioner was supplied to the petitioner. That was the precise grievance made by the petitioner during the course of the proceedings, but there is no dispute that the same was not supplied even at that stage. Against the order dated 9th May, 2005, the petitioner preferred appeal before respondent no. 2 on 17th May, 2005. The said appeal was also dismissed by respondent no. 2 by order dated 17th November, 2005. The petitioner thereafter filed revision application before respondent no. 1 which also met the same fate by order dated 29th April, 2006. Hence, this petition.

3. I have heard Mr. Shirish Joshi learned advocate appearing with Mr. Hasit Joshi learned advocate for the petitioner in both the petitions, Mr. Krunal Pandya learned A.G.P., for the respondent authorities and Mr.

Manish R. Bhatt learned advocate for the respondents in Special Civil Application No. 9348/2007. It is submitted by Mr. Joshi that while cancelling the licence and subsequently confirming the order of cancellation of licence, the respondents of Special Civil Application No. 12107/2006 have completely violated the principles of natural justice. He has submitted that the petitioner was never afforded adequate opportunity to defend his interest *inasmuch* as not a single document, except the show-cause notice, was given to the petitioner. He has further submitted that the accusation that have been levelled against the petitioner are devoid of any merit. In his submission, the petitioner had been scrupulously complying with the terms of licence and whatever the changes that have been effected during the course of the business have been effected after obtaining due permission of the respondent authorities. He has submitted that the irregularity which is alleged in respect of overcharging the price is baseless, since the amount that is alleged to have been illegally received by the petitioner is only Rs.250=00, and no prudent businessman would stake his business for such petty amount. Lastly he has submitted that the entire case has been framed against the petitioner only with a view to please the sitting Member of the Legislative Assembly who had complained against the petitioner and certain other dealers of LPG gas at Dhandhuka. Therefore, this is a

case purely of colourable exercise of power and the action taken in pursuance thereof is required to be quashed and set aside.

3.1. The respondents have contested the petition by filing the affidavit-in-reply. Mr. Krunal Pandya learned A.G.P., has tried to support the impugned orders. He has submitted that the petitioner was found indulging into serious irregularities and that fact alone has prompted the respondent authorities to cancel the licence. It is submitted by him that when the terms of licence are clearly flouted by the petitioner, the respondent authorities are within their bounds to take such action. He has however, not disputed the fact that along with the show cause notice relevant material on which reliance was placed by the respondent authorities in taking the impugned decisions was not supplied to the petitioner. Mr. Manish Bhatt learned advocate appearing for the respondents in Special Civil Application No. 9348/2007 has submitted that discontinuance of supply of LPG gas to the petitioner is only as a consequence of the action taken by the Government authorities since by virtue of “INDANE” [Liquified Petroleum Gas] Distributorship (Domestic & Commercial) Agreement and in particular, Clause in Item no. 27, which requires the respondent Corporation to terminate the agreement and discontinue

the supply of LPG gas to the petitioner.

4. Having heard the learned advocates for the respective parties and having closely perused the record of the petition, it clearly appears that the cancellation of licence is solely in view of the irregularities which are alleged to have been committed by the petitioner. The irregularities which have been stated above, clearly show that they are based on the material which has been collected by the respondent authorities upon receiving the complaint against the petitioner. In other words, these charges have been based by the respondent authorities purely on the factual data that was collected by it during the inquiry. The data comprising, amongst other material, is statements of the persons who are either alleged to have suffered certain monetary loss or whose signatures were not obtained on the delivery slips. There is also no dispute that this factual data has been extensively relied on by the respondent authorities, while taking the impugned decision of cancellation of the licence and subsequently by the higher forums while determining the validity and legality of the impugned action of respondent no. 3 in appeal as well as in the revisional proceedings filed by the petitioner. Unfortunately, the petitioner has been totally kept in

the dark what material was used against him all throughout. It is obvious that when the petitioner was not supplied with the material he would not be in a position to contest or controvert the contents of the statements which were recorded during inquiry. In other words, he was not in a position to challenge the veracity of this material. It may be noted here, that way back in the year 1990, the Government of Gujarat had thought it fit to issue Circular requiring the concerned authorities to take certain vital steps before resorting to the procedure under Section 8, 9, 10 and 11 of the Essential Commodities Act and the orders issued thereunder. Item no. 4 of the said Circular shows that the concerned person is required to be supplied with the statements which have been recorded during the inquiry and record which has been seized during the inquiry etc., and other relevant material with the show-cause notice. This provision is made solely with a view to see that proper opportunity of defending the interest of such person is given to him. This requirement is mandatory in nature because it relates to the compliance of principles of natural justice. If that is not done, the impugned action gets vitiated, since it would amount to violation of principles of natural justice. This Court on number of occasions has held that furnishing the material sought to

be relied on by the party before taking the impugned action, is required to be furnished to the concerned persons, along with the show-cause notice to enable him to give effective reply and when that has not been done, the decision which is taken after relying on such material is required to be quashed and set aside. In the case of *Dashrathji Shivaji Thakor v. State of Gujarat*, the learned Single Judge of this Court has delivered a decision *dated 18th October, 2004 in Special Civil Application No. 2964/2003,* wherein it has been held as under :-

> "7. I have heard learned counsel for the parties and perused the relevant documents on record. While issuing the show cause notice dated 15th January, 2001, the licensing authority has not supplied all the necessary documents which were relied on by it. Moreover, the petitioner was not issued with show cause notice, at Annexure-C to the petition, before the license was cancelled, which was mandatory on the part of the licensing authority, as provided under the Gujarat Essential Articles (Licensing Control and Stock Declaration) Order, 1981. Therefore, the order of the respondent authorities is required to be quashed and set aside."

4.1. Similar view has also been taken by this Court in the decision rendered in the case of *Ekta Consumers cooperative Stores v. State of Gujarat & Ors., dated 27th November, 2001; in Special Civil Application No. 3109/2001*, in the case of *Harnarayan Bhaiyalal Shahu v.*

State of Gujarat dated 19th April, 2000 in Special Civil Application No. 7994/1998l and in the case of *Shyamlal Ganiram Shah v. Assistant Civil Supply, Controller dated 23rd February, 2005 in Misc. Civil Application No. 1101/2004 in Special Civil Application No. 7346/1997*. Thus, the proposition of law is very clear on this aspect and I have no reason to deviate from the same by taking the different view. Therefore, when the principles of natural justice are not being complied with by the respondent authorities, the net result is the impugned decisions dated 9th May, 2005 cancelling the licence of the petitioner bearing no. 333/1995 and the subsequent orders passed by respondent no. 2 dated 7th November, 2005 and respondent no. 5 dated 29th April, 2006, are required to be quashed and set aside and they are hereby quashed and set aside. Since the order of respondents of Special Civil Application No. 9348/2007 is based on the impugned decisions of Special Civil Application No. 12107/2006, which is quashed and set aside, this order dated 7th March, 2007 is also quashed and set aside. The petitions are allowed. Rule is made absolute with no order as to costs.

[Akshay H. Mehta, J.]

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